

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

PAUL M. NELSON,)
)
Petitioner,)
)
v.) Case No. CIV-11-636-D
)
DAVID PARKER, Warden,)
)
Defendant.)

O R D E R

Before the Court is the Report and Recommendation [Doc. No. 10] issued by United States Magistrate Judge Bana Roberts pursuant to 28 U.S.C. § 636(b)(1)(B). Judge Roberts recommends dismissal of the action without prejudice based on Petitioner's failure to pay the required \$5.00 filing fee or to file a proper motion to proceed without prepayment. Judge Roberts finds that Petitioner has neither complied with prior orders to cure the deficiency, shown good cause for noncompliance, nor requested additional time to comply.

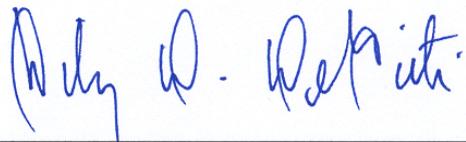
Petitioner has filed a timely objection to the Report, stating that a \$5.00 payment was previously sent to the Eastern District of Oklahoma before the case was transferred to this district on June 7, 2011. His objection is accompanied by a copy of his institutional account statement, which reflects a \$5.00 deduction on June 6, 2011, for a legal filing fee.

The Court has inquired of the Clerk of Court and has confirmed that no payment has been received in this district. The Court has also been advised that an inquiry was made of the clerk's office in the Eastern District and no payment has been received by that court. The case records in this court and the Eastern District contain no receipt for payment of the \$5.00 filing fee. The account statement submitted by Petitioner does not indicate to which court or for which action a

payment was made. Accordingly, the Court finds no factual basis to disagree with Judge Roberts' finding that Petitioner has failed to comply with the order for payment. Under the circumstances, however, the Court declines to order a dismissal without giving Petitioner an opportunity to cure the deficiency, in light of the information contained in this Order. The Court will extend the deadline for payment and will direct Petitioner to either pay the \$5.00 filing fee or file a motion for leave to proceed without prepayment, within 30 days of this Order.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 10] is adopted to the extent set forth herein. Petitioner shall pay the \$5.00 filing fee for this action, or file a proper motion for leave to proceed without prepayment of the fee pursuant to 28 U.S.C. § 1915(a)(1), within 30 days of the date of this Order. Failure to comply with this Order will result in the dismissal of this action without prejudice to refiling.

IT IS SO ORDERED this 3rd day of August, 2011.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE